

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Kane, et al.

Plaintiffs,

vs.

de Blasio, et al.

Defendants.

DECLARATION OF MICHAEL KANE

Civil Action No. 1:21-cv-07863

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

MICHAEL KANE, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true:

- 1) My name is Michael Kane.
- 2) I have worked in the New York City public school system for over 14 years. My current position is as an appointed Special Education Teacher in Jamaica, Queens.
- 3) I have religious objections to vaccines, and my faith does not allow me to take a covid-19 vaccine.
- 4) In addition, in February of 2020 – just 3 weeks before the “COVID lockdown” in NYC, my entire family suffered from classic covid-like symptoms. I believe my entire family has been infected by the SARS CoV-2 virus and recovered though I have not had an antibody test yet.
- 5) On or about September 18th I submitted an application for a religious exemption to vaccination through the NYC DOE SOLAS portal and was quickly denied with a form letter, boilerplate response.

- 6) I know for a fact multiple teachers and educators received the identical denial.
- 7) I know this because I am the founder of the group NY TEACHERS FOR CHOICE and receive hundreds of emails everyday from educators across NYC.
- 8) Dozens of teachers sent me their denials which were identical to mine. My denial letter, like all the others, stated I was denied because it would be an “undue hardship” to grant me an exemption.
- 9) I appealed and was eventually granted a hearing.
- 10) I appeared via zoom to defend my denied exemption on October 1, 2021. My basic religious beliefs were retold to the arbitrator as follows: I was raised in both Catholicism and Buddhism. But my relationship with God and my religious beliefs are personal in nature. I follow the teachings of Buddha and Christ as my foundational spiritual guides, along with daily prayer, attention to scripture and reliance on guidance from the Holy Spirit.
- 11) The DOE attorney stated that the City did not challenge my sincerity but asserted in closing arguments only one argument: that I should be denied an exemption because “the Pope” recommends vaccination and the Dalai Lama is himself vaccinated.
- 12) The Pope and the Dalai Lama are not a part of my daily religious practices. I do not pray to them, fellowship with them, nor do I seek their advice and counsel in regards to my religious practice and beliefs. Not all Buddhists are devotees of the Dalai Lama, and not all Christians follow the Pope.
- 13) While I was raised by pseudo-Catholic parents, I recognize the Pope as I do any person – as a human being with both positive traits and flaws. Further, the DOE believes I cannot prevail without a letter from a clergy member. I do not need any letter from any clergy

member to certify my personal religious beliefs as I obtain conscious contact with my higher power in prayer on a daily basis.

14) The NYC DOE should not play any role in telling me what religious beliefs I should or shouldn't have and what religious leaders I should and shouldn't follow.

15) I do not know if the arbitrator will accept my exemption after consideration. As of now the decision is "still pending."

16) On Friday October 1, 2021 at around 10pm I received an email saying on Monday I will NOT be placed on unpaid leave as my exemption and appeal are still under review, however I am also NOT allowed inside my school building in Jamaica Queens.

17) I must stay at home until a decision about my religious exemption is made. So even if I "win" my appeal I will not be allowed to service the students I know and love.

18) This is where the most damage is being done – to the students I work with everyday, especially special education students.

19) I am a special education teacher with over 14 years in the NYC DOE. In my school, we already have 2 content teachers on leave, and I work with both of them. My role is as an ICT teacher or "co-teacher." The content teacher is responsible for teaching the entire class and I am responsible for assisting the special education students.

20) Since both content teachers are on leave and we already have 2 subs, I am lesson planning for the entire class and teaching the entire class while my special education students are not receiving the level of services they are legally entitled to by the specialist they are entitled to.

21) If I am removed from the school, the substitutes who have little experience and no sense of obligation to serve the students will be left to run the class on their own. This will be

an educational nightmare for all the students, but especially for my special education population. After the 18-month educational disaster of remote learning in NYC it is horrible to see such a lack of care for the students continuing.

- 22) In other classes, where I am working with a content teacher (not substitutes) in the proper situation, when I am removed it is highly unlikely I will be replaced.
- 23) Councilman Mark Treyger, who is head of the City Council education committee, stated that the NYC DOE plans to send employees from their central offices to work in school buildings. I can guarantee you not one of those people is a properly licensed and experienced special education teacher with over 14 years of experience.
- 24) On the evening of Saturday October 2nd, an online chat group made of only UFT & NYC DOE employees exploded with information on the newly announced redeployment of central office NYC DOE staffers. In the social media group known as NYC DOE TEACHERS AND OTHER UFT MEMBERS ONLY CHAT a group post was made by "Florely FP" stating hundreds of central staff workers were just informed on Saturday October 2nd they must report to schools on Monday to cover the coming teacher and staff shortages.
- 25) The MOA states the reassignment of these employees could be until June of 2022 and these employees were given no prior notice and no time to even collect their personal items in their central office.
- 26) Some of these employees are being deployed in different boroughs than where they currently work, adding hours to their commutes. Some have no idea how they will pick up their own kids from school now that their daily schedules and routines have been turned upside down with only 1-day notice.

27) This is a huge contradiction to the recent public statements from Mayor de Blasio where he repeatedly states that there are "thousands and thousands" of qualified substitutes ready to be deployed.

28) On Saturday October 2nd in an article written by Melissa Klein and Susan Edeleman published in the NY POST, a Brooklyn principal was quoted as saying, "They're saying there's plenty of substitutes. They're smoking crack. I think (Monday) will be an all-around s-tshow."

29) Over the weekend Tracie Strahan reported on NBC that Brooklyn Tech High School normally has 20 security guards on duty, but as of Monday October 4th that may drop to only 1 security guard.

30) Veteran NY POST reporter Susan Edelman announced NYC DOE still has 15,000 employees who are unvaccinated. She tweeted the following the evening of Friday October 1st:

NYC gives numbers: As of today, the city says, at least 90% of all DOE employees (133,00 out of 148,000) are vaccinated -- including 72,500 out of 78,000 teachers and 1,570 out of 1,600 principals. "Full and final numbers" promised on Monday

31) She later confirmed this by publishing these numbers in the NY POST the next day.

32) NYC Teacher Rachel Maniscalco who is the lead plaintiff on MANISCACLO vs NYC DOE representing over 700 NYC DOE employees told me many schools in Staten Island will lose up to 50% of their staff on Monday October 4th. One school in particular is poised to lose 100 employees.

33) Community Education Council (CEC) President for District 26 Adriana Aviles in Queens, NY told me her children's school is poised to lose their entire science department as well as all of their African American teachers.

34) In addition to the academic loss students at my school will face, losing me also contributes to a social emotional loss as well.

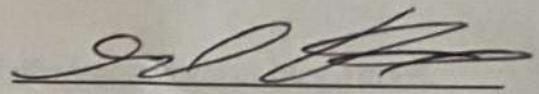
35) During the past 5 years, I have run a **DREAMers Alliance Club** at my school focused on helping immigrant students and their families; especially the undocumented.

36) We have lobbied in Albany for the passing of the DREAM ACT, held KNOW YOUR RIGHTS workshops with immigration attorneys who provided free advice to immigrant community members, volunteered at many IGINITE Young Women's Political Leadership Conferences, and maintained a "safe space" where many undocumented teenagers have shared, cried, and supported one another. I have also personally guided students and parents through various hurdles in immigration court.

37) On Monday, September 18th, a 15-year-old member of my DREAMers Alliance club who I've known for years came up to me and said, "Mr. Kane are you leaving?" "I don't know. Why do you ask?" I replied. "Because everyone's saying you are going to have to leave because you are unvaccinated," she said. "I'm really not sure. There are court cases about this right now," I replied. "If you leave, is there going to be a DREAMers Alliance this year?" She began to tear up.

38) This is a student who never told anyone about her family's status until she came to our club where we made her feel safe. I have secured a \$6,000 grant with the help of my administration for the club to help immigrant populations in our school and community this year. I've known this student and all my club members for years. What we have created together is not easily replaced or "substituted" as even the best teachers are not necessarily passionate immigrant rights activists as I am.

- 39) In regard to my personal religious exemption, even if it is accepted, the process alone felt like a violation of my constitutional rights and also my most sacred faith. It felt like a witch hunt.
- 40) In addition, the accommodation is not sufficient. If I'm allowed to continue working for NYC public schools, I cannot enter any school building and will be prohibited from helping students.
- 41) This makes no sense to me as the CDC Director has stated on CNN with Wolf Blitzer that COVID vaccines do not stop the transmission of SARS CoV-2.
- 42) In NYC Schools we also have multiple layers of protection including universal masking, social distancing, daily health screenings, etc...these measures actually do play a role in reducing the transmission of SARS CoV-2.
- 43) I do not pose any greater threat to anyone based on my vaccine status.
- 44) If I am denied, our family will suffer severe hardship. We are not rich, we do not have a lot of savings, and we would not be able to handle the loss of my salary.
- 45) More important than how this is impacting me personally is how it is going to affect all of my students as I described in this statement.
- 46) While it is not ideal, I can still serve a major role to my school community working remotely. Holding parent and IEP meetings, writing IEPs and mentoring two brand new special education teachers who have been in our building for only 1 month (and never worked in the NYC DOE before) are all contributions my principal and special education department would value greatly.
- 47) I pray that the Court hears my concerns and can intervene appropriately and swiftly.



Michael Kane